

**Notice of Allowability**

Application No.

10/779,718

Examiner

David J. Steadman

Applicant(s)

BRUNE ET AL.

Art Unit

1656

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 4/27/07.
2. ☒ The allowed claim(s) is/are 20-23.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some\*    c) ☐ None    of the:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/937,296.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                     |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input type="checkbox"/> Examiner's Amendment/Comment                              |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|  | 9. <input type="checkbox"/> Other _____   |

## **DETAILED ACTION**

### ***Status of the Application***

**[1]** Applicant's amendments to the claims, filed on 1/16/07, 4/11/07, and 4/27/07, are acknowledged. The claim listing filed on 4/27/07 has been entered and replaces all prior versions and listings of the claims.

**[2]** Claims 20-23 are pending in the application.

**[3]** During the telephonic interview conducted on 3/29/07, an examiner's amendment was proposed to applicant, which was accepted and included in the formal claim amendment filed on 4/11/07. However, upon further consideration, the examiner noted in telephonic conversations with Mr. Jay Williams on 4/25/07 and 4/27/07 that the examiner's amendment proposed during the 3/29/07 interview should have recited "SEQ ID NO:2" rather than "SEQ ID NO:1" as SEQ ID NO:2 already has Cys at position 112. During the 4/25/07 and 4/27/07 telephonic conversations, Mr. Williams agreed to submit a formal claim amendment to replace "SEQ ID NO:1" in the claim amendment filed on 4/11/07 with "SEQ ID NO:2". This change is reflected in the claim amendment filed on 4/27/07.

### ***Reasons for Allowance***

**[4]** The prior art teaches the use of NDPK polypeptides for monitoring the presence of ATP in a sample (see, e.g., the reference of Deville-Bonne et al., *Biochemistry* 35:14643-14650, 1996; cited as reference AI in the IDS filed on 18 February 2004). However, the examiner has found no teaching or suggestion in the prior art of record to

Art Unit: 1656


make the NDPK polypeptide of SEQ ID NO:2, which is a modified wild-type *Myxococcus xanthus* NDPK, wherein Asp at position 112 is replaced with Cys, thereby allowing for covalent attachment of an IDCC label (pp. 5-6 of the instant specification). Therefore, claims 20-23, drawn to methods of detecting the presence of a nucleoside triphosphate in a sample using the NDPK polypeptide of SEQ ID NO:2 with IDCC attached to Cys at position 112 of SEQ ID NO:2, are allowable over the prior art of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Steadman whose telephone number is 571-272-0942. The examiner can normally be reached on Monday to Friday, 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathleen Kerr Bragdon can be reached on 571-272-0931. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Steadman, Ph.D.  
Primary Examiner  
Art Unit 1656